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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 IN RE: TOYOTA MOTOR CORP.
20 UNINTENDED ACCELERATION
21 MARKETING, SALES PRACTICES, AND
22 PRODUCTS LIABILITY LITIGATION

23 This document relates to:
24
25 ALL CASES

Case No. 8:10ML02151 JVS (FMOx)

**TOYOTA'S NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFFS' ECONOMIC LOSS
MASTER CONSOLIDATED
COMPLAINT**

Fed. R. Civ. P. 12(b)(6)

[Filed concurrently with Memorandum
of Points and Authorities; Motion to
Strike; Declaration of Lisa Gilford;
Request for Judicial Notice; Appendix of
Non-Federal and Out-of-State
Authorities; and [Proposed] Orders]

Date: November 19, 2010
Time: 9:00 a.m.
Courtroom: 10C

Economic Loss Master Consolidated
Complaint filed August 2, 2010

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on November 19, 2010 at 9:00 a.m. or as soon as counsel may be heard in Courtroom 10C of the above-referenced Court, located at 411 West Fourth Street, Room 1053, Santa Ana, California 92701, Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (collectively, “Toyota”), will and hereby do move, pursuant to Fed. R. Civ. P. 12(b)(6), for an order dismissing Plaintiffs’ Economic Loss Master Consolidated Complaint (“MCC”) filed in this MDL proceeding.

This Motion is made on the grounds that, as set forth more fully in the accompanying Memorandum of Points and Authorities, the MCC, in its entirety, fails to state valid claims for relief against Toyota, as a matter of law.

The MCC pleads 10 causes of action: (Count I) Violations of the Consumer Legal Remedies Act (CLRA); (Count II) Violation of the California Unfair Competition Law (UCL); (Count III) Violation of the California False Advertising Law (FAL); (Count IV) Breach of Express Warranty; (Count V) Breach of the Implied Warranty of Merchantability; (Count VI) Revocation of Acceptance; (Count VII) Violation of Magnuson-Moss Warranty Act; (Count VIII) Breach of Contract/Common Law Warranty; (Count IX) Fraud by Concealment; and (Count X) Unjust Enrichment.

Plaintiffs’ claims warrant 12(b)(6) dismissal for the following reasons:

1. Lack of Standing. As a threshold matter, Plaintiffs fail to satisfy the Article III and California statutory standing requirements to assert claims against Toyota. As explained in Toyota’s Memorandum of Points and Authorities, 22 of the Consumer Plaintiffs and all 4 of the Non-Consumer Plaintiffs named in the MCC do not allege experiencing any unintended acceleration and therefore, have not suffered actual injury-in-fact necessary to satisfy Article III. Additionally, *none* of the 52 named Plaintiffs have standing to bring the CLRA, UCL, and FAL statutory claims (Counts I-III), because they fail to plead reliance and actual causation in accordance

1 with the standing requirements.

2 2. CLRA Claim (Count I): Plaintiffs' CLRA claim should be dismissed,
3 because: (a) Plaintiffs lack standing under California state law and Article III; (b)
4 Plaintiffs fail to sufficiently plead a duty to disclose material facts under the CLRA;
5 and (c) Plaintiffs fail to satisfy the heightened pleading requirements of Fed. R. Civ.
6 P. 9(b). In addition, Plaintiffs' request for damages should be dismissed or stricken,
7 because they failed to provide the requisite notice within 30 days prior to the
8 commencement of action as required under Cal. Civ. Code § 1782(a)

9 3. UCL Claim (Count II). Plaintiffs' UCL claim should be dismissed,
10 because Plaintiffs lack standing under Proposition 64 and Article III.

11 4. FAL Claim (Count III): Plaintiffs' FAL claim should be dismissed,
12 because: (a) Plaintiffs lack standing under Proposition 64 and Article III; (b)
13 Plaintiffs fail to sufficiently allege any representations or omissions that are likely to
14 deceive as a matter of law; (c) Plaintiffs fail to satisfy the heightened pleading
15 requirements of Fed. R. Civ. P. 9(b).

16 5. Breach of Express Warranty Claim (Count IV): Plaintiffs' breach of
17 express warranty claim should be dismissed, because: (a) Plaintiffs fail to plead the
18 express terms of valid warranties that Plaintiffs relied upon; (b) Plaintiffs fail to plead
19 a valid claim based on failure to "repair or adjust"; (c) Plaintiffs' alleged design defect
20 does not fall within the scope of the express warranty in Toyota's Warranty Manual;
21 (d) numerous Plaintiffs fail to meet other requirements for a valid express warranty
22 claim. In addition, Plaintiffs' request for damages is improper, because repair and
23 adjustment are the exclusive remedies available under Toyota's Warranty Manual and
24 therefore, should be dismissed or stricken.

25 6. Breach of Implied Warranty of Merchantability Claim (Count V):
26 Plaintiffs' breach of implied warranty of merchantability claim should be dismissed,
27 because Plaintiffs cannot establish that the requisite privity exists between Plaintiffs
28 and Toyota. In addition, the 22 Consumer Plaintiffs and 4 Non-Consumer Plaintiffs

1 lack standing for failure to allege an actual injury-in-fact under Article III.

2 7. Revocation of Acceptance Claim (Count VI): Plaintiffs' revocation of
3 acceptance claim should be dismissed, because: (a) Plaintiffs cannot establish that the
4 requisite privity exists between Plaintiffs and Toyota; (b) Plaintiffs fail to plead a
5 valid revocation of acceptance claim; (c) Toyota's Warranty Manual expressly limits
6 Plaintiffs' remedy to repair or adjustment.

7 8. Magnuson-Moss Warranty Claim (Count VII): Plaintiffs' Magnuson-
8 Moss warranty claim should be dismissed, because Plaintiffs fail to plead a valid state
9 law warranty claim in accordance with 15 U.S.C. §§ 2301, *et seq.*

10 9. Breach of Contract/Common Law Warranty Claim (Count VIII):
11 Plaintiffs' breach of contract/common law warranty claim is duplicative of Plaintiffs'
12 breach of express and implied warranty claims (Counts IV, V) and therefore, should
13 be dismissed or stricken.

14 10. Fraud by Concealment Claim (Count IX): Plaintiffs' fraud by
15 concealment claim should be dismissed, because: (a) Plaintiffs fail to sufficiently
16 plead concealment or suppression of a material fact; (b) Plaintiffs fail to sufficiently
17 plead a duty to disclose material facts under the CLRA; (c) Plaintiffs fail to satisfy the
18 heightened pleading requirements of Fed. R. Civ. P. 9(b).

19 11. Unjust Enrichment Claim (Count X): Plaintiffs' unjust enrichment claim
20 fails, because California does not recognize a cause of action for unjust enrichment.

21 12. Preemption and Improper Requests for Relief:

22 a. Plaintiffs' request for injunctive relief requiring Toyota to
23 implement fail safe mechanisms amounts to a court-ordered recall and is preempted
24 by the National Traffic and Motor Vehicle Safety Act of 1966, 49 U.S.C. §§ 30101 *et*
25 *seq.* For similar reasons, this Court should defer to the National Highway Traffic
26 Safety Administration under the doctrine of primary jurisdiction and dismiss or strike
27 Plaintiffs' request for injunctive relief.

28 b. Plaintiffs' request for restitution and/or restitutionary disgorgement

